

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

LEONILA HAMRICK,

Plaintiff,

v.

Civil Action No. 2:23-cv-00717

SAM'S EAST, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiff Leonila Hamrick's Motion to Remand (ECF No. 5), filed December 28, 2023. As plaintiff is proceeding pro se, this matter is referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and recommendations ("PF&R") (ECF No. 11), which were submitted on June 10, 2024. Plaintiff filed an objection thereto (ECF No. 12) on June 21, 2024.

This action was filed in the Circuit Court of Kanawha County on September 29, 2023, and removed to this court on November 3, 2023. See Notice of Removal, ECF No. 1. Plaintiff filed a motion to remand (ECF No. 5) on December 28, 2023, and, after a motion to extend time was granted (ECF Nos. 7, 8), defendant Sam's East, Inc. responded (ECF No. 9) on May 14, 2024, and plaintiff replied (ECF No. 10) on June 3, 2024.

In the PF&R, Judge Tinsley proposes that diversity of citizenship and the amount in controversy are sufficiently established so as to support diversity jurisdiction under 28 U.S.C. section 1332. PF&R at 6-7. Judge Tinsley notes that plaintiff, in her reply, "failed to challenge - or even address - any of the factual assertions in Defendant's Notice [of Removal]" and "declin[ed] to address the issue of subject-matter jurisdiction at all." PF&R at 8.

The court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been made. See Thomas v. Arn, 474 U.S. 140 (1985). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right to appeal the order of the court. See 28 U.S.C. § 636(b)(1); see also United States v. De Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019) (parties typically may not "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require a de novo review absent objection"); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989).

Upon an objection to the PF&R, the court reviews de novo only "those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1); see also Howard's Yellow Cabs,

Inc. v. United States, 987 F. Supp. 469, 474 (W.D.N.C. 1997)

("De novo review is not required or necessary when a party makes general or conclusory objections that do not direct the court to a specific error . . . ."); United States v. Midgette, 478 F.3d 616, 622 (4th Cir. 2007); Opriano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). "Absent a specific and timely filed objection, the court reviews only for 'clear error,' and need not give any explanation for adopting the [PF&R]." United States v. Hernandez-Aguilar, 359 F. Supp. 3d 331, 334 (E.D.N.C. 2019).


Plaintiff's objection to the PF&R asks that the case be remanded but provides no explanation as to why this should occur. See Objection at 1. The objection does not discuss the citizenship of the parties or the amount in controversy; it does not mention the PF&R or the proposals therein whatsoever. The objection reiterates the trouble that plaintiff had as an employee of defendant and the relief requested. See Objection. As it addresses no part of the PF&R, the court need not engage in a de novo review. The court agrees with Judge Tinsley that the court has diversity jurisdiction over this matter.

Accordingly, it is ORDERED that:

1. The findings and recommendation made in the magistrate judge's Proposed Findings and Recommendation be, and hereby are, ADOPTED by the court and incorporated herein;
2. Defendant's Motion to Remand (ECF No. 5) be, and it hereby is, DENIED; and
3. This matter is referred to the magistrate judge for further proceedings.

The Clerk is directed to transmit copies of this order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: July 12, 2024

  
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John T. Copenhaver, Jr.  
Senior United States District Judge